



STATE OF WASHINGTON

DEPARTMENT OF HEALTH

*PO Box 47890 • Olympia, Washington 98504-7890
Tel: 360-236-4030 • 711 Washington State Relay*

September 21, 2026

Submitted via Regulations.gov (Federal eRulemaking Portal)

The Honorable Mehmet Oz
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Attention: CMS-2452-P
P.O. Box 8010
Baltimore, MD 21244-8010

RE: File Code CMS-2452-P (Docket CMS-2026-2476); Medicaid Program; Amending the Indirect Hold Harmless Threshold of Health Care-Related Taxes, 91 Fed. Reg. 46562 (July 23, 2026)

Dear Administrator Oz:

Introduction and Position

The Washington State Department of Health (DOH) appreciates the opportunity to comment on the Centers for Medicare & Medicaid Services (CMS) proposed rule on the indirect hold harmless threshold.¹ While DOH echoes many of the concerns voiced in other submitted comments and urges CMS to abandon the expansion of the rule to taxes on health insurers, we focus our comments on how the proposed rule may impact the assessments that fund Washington's universal childhood vaccine program. If CMS proceeds with the rule's expansion to taxes on health insurers, we ask CMS to make clear in the rule that universal childhood

¹Centers for Medicare & Medicaid Services, Medicaid Program; Amending the Indirect Hold Harmless Threshold of Health Care-Related Taxes, 91 Fed. Reg. 46562 (proposed July 23, 2026) (CMS-2452-P), <https://www.federalregister.gov/documents/2026/07/23/2026-14897/medicaid-program-amending-the-indirect-hold-harmless-threshold-of-health-care-related-taxes>

vaccine program assessments are not health care-related taxes under 42 U.S.C. § 1396b(w) or otherwise are excluded from the scope of the rule. If CMS does not take this requested action, we ask it at least to define the permissible class of services of health insurers broadly enough to include universal childhood vaccine program assessment to ensure that such assessments are not prohibited outright.

Washington's Interest

To facilitate access to vaccination, DOH operates Washington's universal childhood vaccine purchasing system through which it centrally purchases and distributes recommended vaccines for all Washington children at no cost, including children who are privately insured. DOH uses a combination of different funding sources to pay for these activities. State law requires health carriers and third-party administrators to reimburse the state for the vaccination costs for the children they cover.²

Each year the Washington State Secretary of Health estimates the nonfederal cost of vaccine for privately covered children, and health carriers and third-party administrators of self-funded plans pay assessments based on their enrollees' vaccine use, which are deposited with the state treasurer.³ Children whose vaccines are federally funded and children in Apple Health for Kids are excluded from the assessment base.⁴ The receiving account may be spent "exclusively for the purchase of vaccines ... to administer to children under nineteen years old who are not eligible to receive vaccines at no cost through federal programs."⁵ DOH does not use this revenue to finance any Medicaid payment or as non-Federal share. And the assessments are intended only to recover the state's costs for purchasing and distributing recommended vaccines to privately insured children, which costs health carriers and third-party administrators would otherwise pay directly themselves as required under the Affordable Care Act and state law. Indeed, the direct costs to insurers would be higher because, through the universal system, insurers get the benefit of combined purchasing power and discounted rates that DOH obtains when purchasing through CDC and passes along to insurers.

The preamble of the proposed rule treats insurer taxes as health care-related because § 433.55(a)(3) reaches any "assessment, or other mandatory payment" related to "[t]he payment for the health care items or services," and the statute defines "tax" to include any "assessment."⁶ State law calls this charge an assessment and levies it on payers. While DOH firmly believes that these assessments are not the kinds of assessments intended to fall within the definition of health care-related taxes, it strongly urges CMS to modify the proposed rule to make it clear that they do not.

²Wash. Rev. Code § 70.290.020; see id. § 70.290.900, <https://app.leg.wa.gov/RCW/default.aspx?cite=70.290&full=true>

³Wash. Rev. Code §§ 70.290.030(1), (5)(n), 70.290.040(1)–(4), supra note 2.

⁴Wash. Rev. Code § 70.290.010(2), supra note 2.

⁵Wash. Rev. Code § 43.70.720, <https://app.leg.wa.gov/RCW/default.aspx?cite=43.70.720>

⁶91 Fed. Reg. at 46567–68, supra note 1; 42 C.F.R. § 433.55(a), <https://www.law.cornell.edu/cfr/text/42/433.55>; Social Security Act § 1903(w)(7)(F), 42 U.S.C. § 1396b(w)(7)(F), https://www.ssa.gov/OP_Home/ssact/title19/1903.htm

Section 1903(w) was not written to police an assessment like this one. CMS wants to review whether insurer taxes “impermissibly target items or services financed primarily or exclusively through the Medicaid program.”⁷ The assessment does the reverse: it excludes Medicaid-enrolled children and cannot be spent on anything but vaccine for children outside federal programs. In practice, private payers use it to buy vaccine for their own enrollees. DOH asks CMS to make clear in the rule that these assessments, which are levied only for non-Medicaid enrollees, restricted by state law to a non-Medicaid purpose, and not used as non-Federal share, are not a health care-related tax.

If CMS concludes otherwise, it should confirm that this state assessment falls within the proposed permissible class of services of health insurers under the proposed section 433.56(a)(19). Otherwise the assessment would sit in no permissible class, and CMS would have to deduct from Washington’s Medicaid expenditures revenue that never financed Medicaid.⁸ The definition should make clear that the class covers an insurer’s payment for services measured by covered lives, a base the preamble already names, and assessments on third-party administrators for the self-funded plans they administer, which the this state assessment expressly includes.⁹ Where one assessment reaches both health maintenance organizations and other carriers, a state should be able to treat it under one class rather than splitting it between paragraphs (a)(8) and (a)(19).

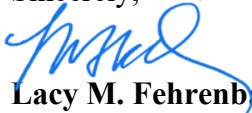
Recommendations

1. State that an assessment levied only for non-Medicaid enrollees, restricted to a non-Medicaid purpose, and not used as non-Federal share, such as assessments imposed on private insurers for the costs of vaccines for their enrollees, is not a health care-related tax.
2. Otherwise, confirm that such an assessment, including one measured by covered lives or levied on third-party administrators, falls within § 433.56(a)(19).
3. Confirm that a longstanding assessment recalculated annually was enacted and imposed as of July 4, 2025.

Conclusion

Washington’s vaccine assessment pays for immunizations for children outside Medicaid and should not put the state’s Medicaid funding at risk. Thank you for considering these comments.

Sincerely,



Lacy M. Fehrenbach, MPH, CPH
Chief of Public Health Strategy & Population Outcomes
Washington State Department of Health

⁷91 Fed. Reg. at 46567, supra note 1.

⁸Social Security Act § 1903(w)(1)(A)(ii), (w)(3)(B), supra note 6; see 91 Fed. Reg. at 46569 (absent a permissible class, existing insurer taxes “could be subject to deductions of the total revenue from a State’s expenditures”).

⁹91 Fed. Reg. at 46567–68, supra note 1; Wash. Rev. Code § 70.290.010(2)(b), (8), supra note 2.